

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CORNELL SMITH,

Plaintiff,

v.

ORDER

MS. ERICKSON, CAPT. GREFF, DONALD
STRAHOTA, WILLIAMS POLLARD, RICH
RAEMISCHER, LT. SABISH, and TONIA MOON,

13-cv-600-wmc

Defendants.

Plaintiff Cornell Smith claims that the defendants, all employees with the Wisconsin Department of Corrections employed at Waupun Correctional Institution, violated his Fourteenth Amendment and Eighth Amendment rights by denying him recreational time. (Compl. (dkt. #1).) This court denied him leave to proceed, finding that he failed to state a claim. At the same time, the court granted plaintiff leave to file an amended complaint as to the Eighth Amendment claim, directing him to specify in particular the length of time he was denied such access. (12/10/14 Order (dkt. #6).) While the court set no deadline for Smith to file an amended complaint, he nonetheless requested two extensions, both of which the court granted. (*See* 12/24/14 Order (dkt. #10); 2/2/2015 Order (dkt. #14).)

On February 12, 2015, plaintiff filed an amended complaint, which the court intended to screen. (Dkt. #15.) That same day, however, plaintiff also filed a motion for reconsideration of the court's original order denying him leave to proceed. (Dkt. #16.) Smith's motion for reconsideration is denied as moot in light of the court's granting him leave to file a proposed amended complaint and Smith's subsequent filing of that complaint.

Normally, that would be the end of the matter (or at least the beginning), except that Smith further complicated matters by filing less than one week later, on February 18, a notice of appeal from the original denial of leave to proceed. (Dkt. #17.) Plaintiff also seeks leave to proceed *in forma pauperis* on appeal. (Dkt. #21.)

Because the court has yet to screen plaintiff's amended complaint, the court finds that Smith's appeal was not taken in good faith for purposes of Fed. R. App. P. 24(a)(3). *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith.").¹ Therefore, Smith's motion will be denied. As for plaintiff's proposed amended complaint, the court will await screening of that complaint pending guidance from the Seventh Circuit on the status of Smith's appeal.

Accordingly, IT IS ORDERED that:

- 1) plaintiff Cornell Smith's motion for reconsideration (dkt. #15) is DENIED AS MOOT;
- 2) plaintiffs' motion for leave to proceed *in forma pauperis* (dkt. #21) is DENIED.

Entered this 7th day of May, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge

¹ Also pending before the court is a motion for more definite statement. (Dkt. #22.) Because this document is captioned for the Seventh Circuit, the court has forwarded it to the Seventh Circuit for its review.